

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's Rules)	ET Docket No. 00-258
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction of)	
New Advanced Wireless Services, Including Third)	
Third Generation Wireless Systems)	
)	
Amendment of Section 2.106 of the Commission's)	ET Docket No. 95-18
Rules to Allocate Spectrum at 2 GHz for Use by)	
the Mobile-Satellite Service)	
)	
The Establishment of Policies and Service Rules)	IB Docket No. 99-81
for the Mobile-Satellite Service in the 2 GHz Band)	

To: The Commission

REPLY COMMENTS OF NEW ICO GLOBAL COMMUNICATIONS

November 8, 2001

Lawrence H. Williams
Suzanne Hutchings
NEW ICO GLOBAL COMMUNICATIONS
(HOLDINGS) LTD.
1730 Rhode Island Avenue, N.W.
Suite 1000
Washington, D.C. 20036

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. THE RECORD SUPPORTS THE FCC’S FINDING THAT THE FULL 2 GHz MSS ALLOCATION SERVES THE PUBLIC INTEREST AND IS NECESSARY TO MEET DEMAND	3
II. REALLOCATION OF THE ENTIRE 2 GHz MSS BAND FALLS OUTSIDE THE SCOPE OF THIS PROCEEDING AND WOULD EFFECTIVELY RESULT IN REVOCATION OR MODIFICATION OF EXISTING LICENSES	7
III. THE FCC MUST NOT ADOPT ANY MODIFICATION TO THE PHASED RELOCATION PLAN THAT WOULD PLACE 2 GHz MSS LICENSEES IN A WORSE POSITION	10
IV. THE FCC WILL FACILITATE THE PROPER FUNCTIONING OF THE MARKET BY ALLOWING 2 GHz MSS LICENSEES FREELY TO TRANSFER SPECTRUM RIGHTS AND SHARE SATELLITE INFRASTRUCTURE	12
CONCLUSION	14

SUMMARY

Parties representing a broad range of interests, including 2 GHz mobile satellite service (“MSS”) licensees, equipment manufacturers, advanced wireless proponents, and end users of MSS, confirm that the existing 2 GHz MSS spectrum allocation policy is in the public interest and should not be revised in any way. The 2 GHz MSS spectrum allocation policy was developed over the last decade, codified in 1997 when the Commission allocated a full 70 MHz of spectrum for MSS in the 2 GHz band, and repeatedly reaffirmed, including as recently as a year ago when the Commission established its 2 GHz MSS licensing and service rules. The comments further demonstrate that 2 GHz MSS licensees, as well as equipment manufacturers, end users, and the wireless industry would be irreparably harmed if the Commission prematurely deprives the public of sufficient spectrum to support the long-term viability of next-generation 2 GHz MSS systems.

On the other hand, support for a reallocation of 2 GHz MSS spectrum to accommodate terrestrial advanced wireless services was lukewarm at best, consisting entirely of conjecture and conclusory assertions regarding the relative public interest benefits and spectrum needs of terrestrial Third Generation mobile wireless systems versus MSS systems. Commenters favoring reallocation fail to offer any reasoned basis for reallocating 10 to 14 MHz of 2 GHz MSS spectrum, let alone the full 70 MHz of spectrum. The record is wholly inadequate to warrant any departure from the Commission’s well-established 2 GHz MSS spectrum allocation policy.

Furthermore, the parties addressing this issue recognize that reallocation of 2 GHz MSS spectrum could require radical changes to the 2 GHz phased relocation plan. The Commission must not adopt any modification of its 2 GHz allocation and relocation

policies that would impose additional relocation costs upon 2 GHz MSS licensees. The Commission also must not adopt any other modification of the 2 GHz relocation plan, such as eliminating or extending the relocation sunset date and suspending the mandatory negotiation period.

Finally, the commenters overwhelmingly support regulatory flexibility in permitting 2 GHz MSS licensees to transfer their licenses and consolidate operations. No party in this proceeding has offered any persuasive argument to justify any differential regulatory treatment between 2 GHz MSS licensees and other wireless licensees with respect to the transfer of licenses and sharing of infrastructure.

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REPLY COMMENTS OF NEW ICO GLOBAL COMMUNICATIONS

New ICO Global Communications (Holdings) Ltd. ("New ICO")¹ submits these reply comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.²

The record developed in this proceeding strongly favors the preservation of existing allocation for mobile satellite services ("MSS") in the 2 GHz band.³ Specifically, comments

¹ New ICO, a Delaware corporation, is the parent of ICO Services Limited, a UK company that is authorized to provide 2 GHz mobile satellite service in the United States.

² See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, ET Docket No. 00-258, FCC No. 01-224 (Aug. 20, 2001) ("*Advanced Wireless FNPRM*"). All comments filed in this docket will hereinafter be short cited.

filed by New ICO and other 2 GHz MSS licensees,⁴ as well as equipment manufacturers, advanced wireless proponents, and end users of MSS, show that MSS can fully satisfy the urgent, ever-growing public demand that exists for basic and advanced wireless services, particularly in underserved areas and during times of emergency. These comments further show that MSS systems will make full use of the 2 GHz band and have expended (and continue to invest) billions of dollars to ensure prompt delivery of service to the public. 2 GHz MSS licensees, as well as equipment manufacturers, end users, and the wireless industry would be irreparably harmed if the Commission prematurely deprives the public of sufficient spectrum to support the long-term viability of next-generation 2 GHz MSS systems.

In contrast, proponents of a reallocation of 2 GHz MSS spectrum, primarily consisting of terrestrial mobile carriers and manufacturers of terrestrial mobile equipment (collectively, the “Terrestrial 3G Proponents”), fail to make the case that reallocation of spectrum for terrestrial Third Generation mobile wireless (“3G”) use at the expense of MSS will in any way serve the public interest. In fact, Terrestrial 3G Proponents have ignored such critical issues as the amount of additional spectrum needed for 3G services, when additional spectrum actually will be needed for 3G services, the feasibility of reallocating 2 GHz MSS spectrum for advanced wireless services, and the impact of any reallocation on the existing 2 GHz phased relocation plan. Consequently, the Terrestrial 3G Proponents have failed to meet their burden of showing that the public interest requires any departure from the existing 2 GHz MSS spectrum allocation policy.

³ As used herein, the terms “2 GHz band” and “2 GHz MSS spectrum” will refer to spectrum at 1990-2025 MHz and 2165-2200 MHz.

⁴ With respect to 2 GHz MSS, the terms “licensees” and “licenses,” as used herein, will refer, respectively, to all authorized 2 GHz MSS system proponents and their FCC authorizations to provide 2 GHz MSS in the United States.

I. THE RECORD SUPPORTS THE FCC'S FINDING THAT THE FULL 2 GHz MSS ALLOCATION SERVES THE PUBLIC INTEREST AND IS NECESSARY TO MEET DEMAND

Although the Terrestrial 3G Proponents support reallocation of at least 10 to 14 MHz of the 2 GHz MSS spectrum for advanced wireless services,⁵ none attempts to refute the Commission's repeated findings that the full 2 GHz MSS allocation serves the public interest and is necessary to meet demand.⁶ The Terrestrial 3G Proponents rely heavily upon the 2000 World Radiocommunication Conference forecast that 160 MHz of additional spectrum will be needed by 2010 to meet the projected requirements of 3G in areas where traffic is highest,⁷ but they ignore entirely the finding of the Radiocommunication Sector of the International Telecommunication Union ("ITU") that 206 MHz of additional spectrum will be needed for MSS by 2005.⁸ Other than the modest 70 MHz of spectrum currently allocated for MSS in the 2 GHz band, the Commission has not allocated any additional spectrum to meet the ITU-forecasted spectrum needs of MSS.⁹ Preservation of the existing 2 GHz MSS allocation then is essential if

⁵ See Comments of the Cellular Telecommunications & Internet Association ("CTIA") at 4-8; Comments of Verizon Wireless at 11-14; Comments of AT&T Wireless Services ("AT&T Wireless") at 7-9; Comments of Arraycom at 7-10; Comments of the Wireless Communications Division of the Telecommunications Industry Association at 6-7; Comments of Telephone and Data Systems at 6-8; Comments of Motorola at 12; Comments of QUALCOMM at 2-4; Comments of Nortel Networks at 6; Comments of Ericsson at 11-13; Comments of the Progress & Freedom Foundation ("PFF") at 10-11. See also Comments of Cingular Wireless at 7-10 (opposing FCC proposal to reallocate only 10 to 14 MHz of 2 GHz MSS spectrum, but urging reallocation of entire 2 GHz MSS spectrum); Comments of Nokia at 3 (supporting reallocation of spectrum at 2165-270 MHz).

⁶ See, e.g., *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, First Report and Order and Further Notice of Proposed Rule Making, 12 FCC Rcd 7388, 7395 ¶ 14 (1997) ("2 GHz MSS Allocation Order") ("it is in the public interest to allocate the full 70 megahertz...to MSS as proposed, rather than a lesser amount."); *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order, 13 FCC Rcd 23949, 23953-4 ¶ 10 (1998) ("The record contains ample evidence that MSS will need at least 70 megahertz of spectrum to meet demand.").

⁷ See Comments of Cingular Wireless at 2-3; Comments of Verizon Wireless at 2.

⁸ See *2 GHz Allocation Order* at 7394-5 ¶ 13; *Preparation for International Telecommunication Union World Radiocommunication Conferences*, Report, 10 FCC Rcd 12783, 12797 ¶ 39 (1995).

⁹ See Comments of Globalstar at 7-8.

the Commission is to satisfy, even partially, the projected MSS spectrum needs by 2005.

Moreover, Terrestrial 3G Proponents cannot justify a reduction of the 2 GHz MSS allocation, particularly when the record shows that terrestrial 3G spectrum needs may not fully materialize for close to a decade.¹⁰

None of the Terrestrial 3G Proponents denies the important benefits that only MSS can offer, such as the capability to provide basic and advanced communications services to underserved areas of the United States and the world. In fact, New ICO and other parties submitted overwhelming evidence that MSS is not only useful, but also routinely used in all parts of the world, particularly during times of disaster when terrestrial systems are overwhelmed, impaired, or otherwise unavailable.¹¹ The record also demonstrates that 2 GHz MSS systems are likely to deliver basic and advanced services promptly and to larger areas of the United States than terrestrial mobile systems.¹² Despite calls by the Commission and Department of Defense for additional information,¹³ no terrestrial mobile carrier or other party has offered any specific data regarding the amount of additional spectrum needed for terrestrial 3G services in the United

¹⁰ Iridium, while opposing a reallocation per se of 2 GHz MSS spectrum, inexplicably has presented an unworkable proposal that the Commission establish a "secondary terrestrial service" allocation in all MSS bands. New ICO will address this proposal at length in its Reply Comments to be filed on November 13, 2001 in IB Docket No. 01-185 and ET Docket No. 95-18.

¹¹ See, e.g., Comments of New ICO at 7-14; Comments of Lockheed Martin at 5-6 ("MSS systems generally are often the first emergency communications services re-established when disaster occurs."); Comments of the Mobile Satellite Users Association ("MSUA") at 2-3 ("Mobile satellite communications are used daily for routine business operations as well as in emergencies on land, at sea and in the air").

¹² See, e.g., Comments of New ICO at 7-11; Comments of Constellation Communications Holdings ("CCH") at 3-4; Comments of Globalstar at 4-7; Comments of Boeing at 9-14; Comments of the MSUA at 2-3.

¹³ See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, FCC No. 00-455, Notice of Proposed Rulemaking and Order, 16 FCC Rcd 596, 608 ¶ 28 (2000) ("*Advanced Wireless Order*") (requesting information on how much and when additional spectrum will be needed for 3G services); Testimony of Dr. Linton Wells II, Acting Assistant Secretary of Defense, before the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation (July 31, 2001) *Footnote continues...*

States, the projected demand for these services, or the expected launch of these services. In fact, the chief technical officer of Cingular Wireless recently stated that the company expects to have sufficient spectrum for the next five years.¹⁴ Cingular Wireless also announced that it has no plans to launch full 3G services in the next few years.¹⁵ Recent reports further confirm the bleak prospects for the deployment of 3G in the near future.¹⁶

The Terrestrial 3G Proponents do not dispute the public interest benefits of MSS, but merely contend that the financial difficulties of some MSS licensees offer evidence that the entire MSS industry is not viable and does not require the full 2 GHz MSS allocation to meet the communications needs of the public.¹⁷ This argument defies logic. The financial difficulties of any particular MSS licensee do not suggest that the entire MSS industry is doomed to fail, any more so than the financial difficulties of a Personal Communications Service (“PCS”) licensee

(stating that “spectrum needs of the US wireless mobile industry should be updated and refined and timelines for such spectrum spelled out”).

¹⁴ See Elizabeth V. Mooney, *Cingular EDGES into 3G Upgrade*, RCR Wireless News at 1, 42 (Nov. 5, 2001). In addition, Sprint and Nextel previously stated that they have a sufficient amount of spectrum. See John Rockhold, *No Spectrum Worries for Sprint*, Wireless Review, at 9 (Sept. 15, 2000); Sarah Schafer, *Nextel’s Loss Narrows, Subscriber List Grows*, Washington Post, at E1-E2 (July 19, 2000).

¹⁵ Cingular Wireless announced that it will overlay its TDMA and analog networks with Enhanced Data Rate for GSM Evolution (“EDGE”), a software enhancement of General Packet Radio Service technology, rather than adopt 3G standards such as wideband-CDMA. See Richard Waters, *Cingular Adds to US Caution over 3G Technology*, Financial Times (Oct. 31, 2001), available at <http://www.ft.com>; Elizabeth V. Mooney, *Cingular EDGES into 3G Upgrade*, RCR Wireless News, at 1, 42 (Nov. 5, 2001); Dan Meyer, *Cingular 3G Plan Draws Mixed Results*, RCR Wireless News, at 1, 42 (Nov. 5, 2001). EDGE generally is considered to be 2.5G, rather than 3G, technology. See Comments of Lockheed Martin Corporation at 4; Justin Bachman, *Cingular Chooses GSM in Upgrade*, Associated Press (Oct. 30, 2001); Margot Suydam, *Might as Well Jump; 3G: The Cellular Industry’s Leap of Faith*, CommVerge, at 20 (Nov. 1, 2001).

¹⁶ See, e.g., *Motorola Eyes 2004 for 3G in Europe*, Reuters (Oct. 25, 2001) (Motorola announced that it could take until 2004 before a mass market for 3G starts to develop in Europe), at <http://news.cnet.com/news/0-1004-200-7657565.html?tag=nbs>; Robert Anderson, *Czech Operators Shun 3G License Offer*, Financial Times (Oct. 31, 2001), available at <http://www.ft.com> (all of Czech Republic’s mobile telephone operators have refused to pay the government’s offer price for a 3G license).

¹⁷ See, e.g., Comments of Verizon Wireless at 12 n.31; Comments of Cingular Wireless at 7; Comments of AT&T Wireless at 7-8.

suggest that the PCS industry itself no longer serves the public interest.¹⁸ Furthermore, New ICO's and Motient's requests for ancillary terrestrial component ("ATC") use of authorized MSS spectrum do not constitute an admission of failure, any more so than a terrestrial mobile licensee's request for spectrum flexibility demonstrates the infeasibility of that licensee's system as currently authorized.

Notably, when the International Bureau denied the joint request of certain terrestrial wireless carriers to defer grant of the then-pending 2 GHz MSS applications, it expressly rejected the carriers' argument that New ICO's request for ATC use and statements regarding the financial difficulties of some MSS licensees justify deferral of grant of the 2 GHz MSS applications.¹⁹ The Bureau found that New ICO's ATC request had no bearing on the viability of 2 GHz MSS systems and stated that, subject to the conditions of their licenses, the 2 GHz MSS licensees "should be given the opportunity to succeed or fail in the market on their own merits."²⁰ The Bureau further found that the terrestrial wireless carriers offered "no credible information to demonstrate that the findings made by the Commission last year that 2 GHz MSS is in the public interest are called into question."²¹ Similarly, no party in this proceeding has offered any evidence warranting any departure from the Commission's existing 2 GHz MSS spectrum allocation policy.²²

¹⁸ See also Comments of Globalstar at 14-15 ("The failure of one company to implement is generally based on its failure to raise the necessary financing, not because the public interest in the allocation has shifted.").

¹⁹ See *ICO Services Limited*, Order, 16 FCC Rcd 13762, 13774 ¶ 31 (2001).

²⁰ *Id.*

²¹ *Id.*

²² See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) ("an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute") (footnote omitted).

Even if the financial difficulties of a particular MSS licensee forces it to relinquish or default on its license, nothing in the record suggests that the abandoned spectrum should not be re-assigned to successful MSS licensees that could make better use of the spectrum. New ICO and other 2 GHz MSS licensees repeatedly have attested that they will require significantly more than the current assignment of 3.5x2 MHz of spectrum in order to support the long-term operations of their systems.²³ Just as the Commission permits terrestrial mobile carriers to acquire the licenses of operators that default on their licenses without requiring the wholesale reallocation of the spectrum to an entirely different service, it also should afford MSS operators a fair opportunity to acquire abandoned 2 GHz MSS spectrum.

Significantly, while the Terrestrial 3G Proponents support reallocation of 2 GHz MSS spectrum for advanced wireless services, they fail to offer any practical solution that would allow both satellite and terrestrial operators a fair opportunity to acquire the reallocated spectrum. Rather, they assume that the spectrum will be auctioned off to terrestrial mobile carriers only. This approach, however, directly contradicts the Commission's stated intent in this proceeding "not...to set aside a certain amount of spectrum restricted to a given technology."²⁴

II. REALLOCATION OF THE ENTIRE 2 GHz MSS BAND FALLS OUTSIDE THE SCOPE OF THIS PROCEEDING AND WOULD EFFECTIVELY RESULT IN REVOCATION OR MODIFICATION OF EXISTING LICENSES

The call by some terrestrial wireless carriers to reallocate the entire 2 GHz MSS band, including spectrum already assigned to MSS licensees,²⁵ was expressly rejected by the

²³ See Comments of New ICO at 15; Comments of Boeing at 3; Comments of TMI Communications and Company ("TMI") at 6.

²⁴ *Advanced Wireless Order* at 608 ¶ 27.

²⁵ See Comments of CTIA at 4; Comments of Verizon Wireless at 12; Comments of Cingular Wireless at 7; Comments of AT&T Wireless at 9.

Commission in its dismissal of an identical request recently submitted by CTIA “insofar as it requests reallocation of the entire 2 GHz MSS band.”²⁶ Moreover, reallocation of the 2 GHz MSS band contradicts the Commission’s own proposal to ensure that “any reallocation of existing MSS spectrum would not significantly impair any of the current licensees’ rights and reasonable expectations to retain its current assigned spectrum allotment and acquire additional MSS spectrum for purposes of deploying and operating a fully matured 2 GHz MSS system.”²⁷ Accordingly, the terrestrial wireless carriers’ proposal to reallocate the entire 2 GHz MSS band falls outside the scope of the *Advanced Wireless FNPRM*.²⁸

Furthermore, reallocation of the entire 2 GHz MSS band effectively would result in a revocation or substantial modification of existing 2 GHz MSS licenses that were granted only four months ago. This action would harm not only 2 GHz MSS licensees, but also all other FCC licensees, investors, and consumers who rely on the stability of the Commission’s licensing process. It is irresponsible for the terrestrial wireless carriers to seek to deprive 2 GHz MSS licensees of their existing licenses, particularly in the absence of any proposal to identify suitable replacement spectrum or minimize the impact of relocation on the licensees.

At a minimum, Sections 312 and 316 of the Communications Act impose certain procedural hearing requirements before a license may be revoked or modified.²⁹ Although these statutory requirements do not prohibit the Commission from exercising its rulemaking authority

²⁶ *Advanced Wireless FNPRM* ¶ 23.

²⁷ *Advanced Wireless FNPRM* ¶ 29.

²⁸ See *Nat’l Black Media Coalition v. FCC*, 791 F.2d 1016, 1022-23 (2nd Cir. 1986) (holding that FCC’s announcement of a proposal to apply its minority preference policy to AM foreign clear channel license applications failed to give adequate notice to interested parties of its final decision to abandon the policy); *Spartan Radiocasting Co. v. FCC*, 619 F.2d 314, 321 (4th Cir. 1980) (“unfairness results unless persons are sufficiently alerted to likely alternatives so that they know whether their interests are at stake.”) (quotations and citations omitted).

²⁹ See 47 U.S.C. §§ 312, 316.

to establish rules of general applicability,³⁰ the Commission, nonetheless, “cannot, merely by invoking its rulemaking authority, avoid the adjudicatory procedures required for granting and modifying *individual* licenses.”³¹ Thus, for example, the D.C. Circuit Court has invalidated a Commission decision, adopted by rulemaking, to award a license to a consortium of qualified applicants rather than selecting a single licensee.³² The court found that the Commission exceeded its rulemaking authority by adopting the consortium rule and denying applicants their right to comparative hearings required under the Communications Act.³³ Other courts have noted that, notwithstanding the Commission’s authority to establish rules of general applicability, “[a] drastic change in the allowable operation of a [radio] license could result in a judicial determination that a basic license right had been abused, entitling the licensee to a public hearing under [the Communications Act].”³⁴ Certainly, a reallocation of spectrum currently assigned to 2 GHz MSS licensees would constitute a “drastic change” of their authorizations, particularly if unaccompanied by any plan to relocate the licensees to suitable alternative spectrum. Consequently, the Commission may not avoid the statutory hearing requirements of Sections 312 and 316 of the Communications Act merely by exercising its rulemaking authority to reallocate the entire 2 GHz MSS band.

³⁰ See *California Citizens Band Ass’n v. United States*, 375 F.2d 43, 53 (9th Cir. 1967) (holding that FCC’s modifications of its technical rules governing Class D radio stations were minor changes and therefore did not entitle licensees to statutory hearing procedures).

³¹ *Committee for Effective Cellular Rules v. FCC*, 53 F.3d 1309, 1318 (D.C. Cir. 1995) (emphasis in original).

³² See *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 450-52 (D.C. Cir. 1991).

³³ *Id.* On remand, the FCC asserted that it possessed the statutory authority to adopt its consortium rule and reimposed the rule. Subsequently, the D.C. Circuit Court dismissed petitions for review challenging the consortium rule because the petitioners lacked standing to challenge the rule. See *Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993). The court, however, stressed that “*nothing* in our decision today should be read to suggest that the court accepts the Commission’s position that it possesses statutory authority to impose the formation of a mandatory consortium of license applicants in lieu of holding comparative hearings.” *Id.* at 284 (emphasis in original).

III. THE FCC MUST NOT ADOPT ANY MODIFICATION TO THE PHASED RELOCATION PLAN THAT WOULD PLACE 2 GHz MSS LICENSEES IN A WORSE POSITION

A number of comments acknowledged if any 2 GHz MSS spectrum is reallocated, the existing phased relocation plan for incumbents, which was carefully negotiated between broadcast and satellite interests over a six-year period, must be substantially modified (if not eliminated), incurring enormous relocation costs as a result. The Association for Maximum Service Television (“MSTV”), National Association of Broadcasters (“NAB”), and Society of Broadcast Engineers (“SBE”) (collectively, the “Broadcast Parties”) all recognize that reallocation of 2 GHz MSS spectrum, especially uplink spectrum at 2020-2025 MHz, could require the Commission to replace the phased relocation plan with a one-step relocation of Broadcast Auxiliary Service (“BAS”) incumbents. Reallocation of 2 GHz MSS spectrum thus would accelerate and enormously increase near-term relocation costs.³⁵ In view of the acceleration of these costs, the Satellite Communications Division (“SCD”) of the Telecommunications Industry Association states that any reallocation is “simply untenable” and inconsistent with the Commission’s intent to minimize the financial burden of relocation on 2 GHz MSS licensees.³⁶ At a minimum, the Commission should not reallocate any 2 GHz MSS spectrum unless and until it ensures that 2 GHz MSS licensees will not be required to bear any relocation costs in excess of those that would have been incurred under the phased relocation plan. As New ICO proposed in its Comments, if reallocation is deemed necessary, the Commission should reallocate a limited amount of 2 GHz MSS spectrum for use only by

³⁴ *California Citizens Band Ass’n*, 375 F.2d at 53.

³⁵ See Joint Comments of MSTV and NAB at 7-14; Comments of SBE at 1-2.

³⁶ See Comments of SCD at 5-7.

displaced federal government incumbents and only after Phase I of the existing phased relocation plan has ended.³⁷ This variation of a phased reallocation would avoid the need to eliminate the initial relocation plan and help to minimize relocation costs.

New ICO strongly opposes the Broadcast Parties' proposal to eliminate or extend the relocation sunset date and "stay" the mandatory negotiation period. Specifically, the NAB and MSTV's request for elimination or extension of the sunset date reiterates the request they made in their Petition for Partial Reconsideration of the *2 GHz Relocation Order*, but fails to explain how a reallocation of 2 GHz MSS spectrum warrants a change in the sunset date.³⁸ The Commission's stated purpose in establishing the sunset date was to "provide[] a measure of certainty for new technology licensees, while at the same time giving incumbents ample time to prepare for the eventuality of moving to another frequency band."³⁹ The 10-year sunset period gives BAS incumbents more than an ample opportunity to prepare for their relocation. Thus, regardless of whether some 2 GHz MSS spectrum may be reallocated for other uses, there is no reasoned basis for granting BAS incumbents a longer period of time to relocate to their final BAS band, which was adopted more than a year ago and is unaffected by any proposed reallocation of 2 GHz MSS spectrum.

In addition, the Broadcast Parties' request for stay of the negotiation period is both procedurally and substantively defective. In its Opposition to the MSTV and NAB Motion for Stay, New ICO stated that the mandatory negotiations period has been in effect for more than a

³⁷ See Comments of New ICO at 30-31.

³⁸ See Joint Comments of MSTV and NAB at 12-13.

³⁹ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315, 12333 ¶ 52 (2000).

year and a stay of that period would be procedurally improper because it would reverse rather than preserve the status quo.⁴⁰ New ICO further demonstrated that grant of a stay would be improper because (1) MSTV and NAB are unlikely to prevail on the merits of their underlying petition; (2) 2 GHz MSS licensees will suffer irreparable if the stay is granted, (3) no party will suffer irreparable harm if the stay is not granted, and (4) grant of the stay would disserve the public interest.⁴¹

IV. THE FCC WILL FACILITATE THE PROPER FUNCTIONING OF THE MARKET BY ALLOWING 2 GHz MSS LICENSEES FREELY TO TRANSFER SPECTRUM RIGHTS AND SHARE SATELLITE INFRASTRUCTURE

A number of commenters support a flexible regulatory approach that would allow 2 GHz MSS licensees freely to transfer their spectrum rights and share satellite infrastructure with others.⁴² Only one party opposes this approach.⁴³ In arguing against greater spectrum flexibility for 2 GHz MSS licensees, CTIA merely contends that permitting 2 GHz MSS licensees to acquire other licenses in the secondary market would “artificially support the allocation of spectrum to MSS” and “provide a windfall to a few entities, without any compensation to the public and without any assurance that the resulting service would serve public needs.”⁴⁴ CTIA’s position is puzzling, particularly in view of its advocacy in other proceedings for flexible rules

⁴⁰ See Opposition of New ICO, *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, at 3 (Oct. 29, 2001).

⁴¹ *Id.* at 3-6.

⁴² See Comments of New ICO at 6, 37-45; Comments of CCH at 15-16; Comments of TMI at 6-10; Comments of the PFF at 3-6.

⁴³ See Comments of CTIA at 7.

⁴⁴ *Id.*

and policies to promote the development of secondary markets for commercial mobile wireless licenses.⁴⁵

As New ICO noted in its Comments, the Commission already offers other wireless licensees significant flexibility in transferring their licenses and continues to explore additional measures to facilitate secondary markets for those licenses.⁴⁶ CTIA offers no reasoned basis for permitting commercial mobile wireless licensees significant flexibility to transfer spectrum rights and consolidate operations, while limiting these opportunities for 2 GHz MSS licensees. The fact that 2 GHz MSS licenses were not obtained by auction provides no basis for differential treatment. New ICO stated in its Comments that the Commission abolished its anti-trafficking rule governing broadcast services and another rule barring for-profit sales of unbuilt commercial broadcast licenses, even though these licenses were not obtained by auction.⁴⁷ New ICO further noted that the Commission has permitted a Direct Broadcast Service (“DBS”) licensee to acquire control of the authorizations of another DBS licensee without requiring construction of multiple systems, even though those authorizations were not awarded by auction.⁴⁸ Consequently, allowing 2 GHz MSS licensees to acquire additional spectrum in the secondary market and share satellite infrastructure offers a market-based approach to promoting the economic viability of 2 GHz MSS systems and is consistent with the Commission’s spectrum flexibility policies.

⁴⁵ See, e.g., Comments of CTIA, *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, at 1 (Feb. 9, 2001) (supporting FCC initiatives “to permit wireless licensees to participate in voluntary secondary market arrangements for their spectrum”); Comments of CTIA, *2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services*, WT Docket No. 01-14 (Apr. 13, 2001) (urging FCC to remove spectrum cap governing certain commercial mobile radio services).

⁴⁶ See Comments of New ICO at 38-45.

⁴⁷ *Id.* at 38, 42.

⁴⁸ *Id.* at 44 (citing *United States Satellite Broadcasting Co.*, Order and Authorization, 14 FCC Rcd 4585, 4594 ¶ 20 (1999)).

CONCLUSION

The record in this proceeding demonstrates the continued importance of MSS and need for the full MSS allocation in the 2 GHz frequency band. Accordingly, New ICO urges the Commission to adhere to the existing 2 GHz MSS allocation and provide spectrum flexibility to support the long-term growth and success of next-generation 2 GHz MSS systems.

Respectfully submitted,

/s/ Lawrence H. Williams

Cheryl A. Tritt
Phuong N. Pham
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

Its Attorneys

Lawrence H. Williams
Suzanne Hutchings
NEW ICO GLOBAL COMMUNICATIONS
(HOLDINGS) LTD.
1730 Rhode Island Avenue, N.W.
Suite 1000
Washington, D.C. 20036

CERTIFICATE OF SERVICE

I, Gwendolynne M. Chen, do hereby certify that I have on this 8th day of November 2001, had copies of the foregoing **REPLY COMMENTS OF NEW ICO GLOBAL COMMUNICATIONS** electronically delivered to the following:

Peter A. Tenhula, Senior Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-B201I
Washington, D.C. 20554

James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, 3rd Floor
Washington, D.C. 20554

Charles Rush
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4th Floor
Washington, D.C. 20554

Kathleen Ham, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, 3rd Floor
Washington, D.C. 20554

Linda Haller
Associate Bureau Chief
International Bureau
Wireless Telecommunications Bureau
445 12th Street, S.W., 6th Floor
Washington, D.C. 20554

Bryan N. Tramont, Senior Legal Advisor
Office of Commissioner Abernathy
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Paul Margie
Spectrum & Int'l Legal Advisor
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Monica Shah Desai,
Interim Legal Advisor
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C252
Washington, D.C. 20554

Thomas Tycz, Chief
Satellite & Radiocommunication Division
Federal Communications Commission
445 12th Street, S.W., 6th Floor
Washington, D.C. 20554

Donald Abelson, Bureau Chief
International Bureau
Federal Communications Commission
445 12th Street, S.W., 6th Floor
Washington, D.C. 20554

Cecily Holiday, Deputy Chief
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
445 12th Street, S.W., 6th Floor
Washington, D.C. 20554

Anna M. Gomez, Deputy Bureau Chief
International Bureau
Federal Communications Commission
445 12th Street, S.W., 6th Floor
Washington, D.C. 20554

John Spencer
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4th Floor
Washington, D.C. 20554

Cassandra Thomas, Deputy Chief
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
445 12th Street, S.W., 6th Floor
Washington, D.C. 20554

Breck Blalock, Deputy Chief
Planning and Negotiations Division
International Bureau
Federal Communications Commission
445 12th Street, S.W., 6th Floor
Washington, D.C. 20554

Richard B. Engelman, Chief
Planning and Negotiations Division
International Bureau
Federal Communications Commission
445 12th Street, S.W., Room 7-A760
Washington, D.C. 20554

Julius Knapp, Deputy Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W., Room 7-A123
Washington, D.C. 20554

Bruce Franca, Acting Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W., Room 7-A123
Washington, D.C. 20554

Geraldine Matise, Deputy Chief
Policy & Rules Division
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W., Room 7-A123
Washington, D.C. 20554

Karl Kensinger, Special Advisor
Satellite & Radiocommunication Division
Federal Communications Commission
445 12th Street, S.W., 6th Floor
Washington, D.C. 20554

/s/ Gwendolynne M. Chen
Gwendolynne M. Chen